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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,142	04/20/2001	Raymond E. Suorsa	033048-059	9523
21839	7590	08/26/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			PHAN, TAM T	
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ALEXANDRIA, VA 22313-1404			PAPER NUMBER	
			2144	
DATE MAILED: 08/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/838,142

Applicant(s)

SUORSA ET AL.

Examiner

Tam (Jenny) Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application has been examined. Claims 1-21 are presented for examination.

Priority

2. No priority claims have been made.
3. The effective filing date for the subject matter defined in the pending claims in this application is 04/20/2001.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 11-16 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 8-12 of copending Application No. 09/843757. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences between the two pending applications are minor wording, which do not change the scope of the invention. Refer to the below observation for obvious variations of limitation in claims 11-16 of the instant application and claims 1 and 8-12 of the pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Instant Application 09/838,142	Pending Application #09/843757
<p data-bbox="180 489 797 636">11. Method for installing software on a hardware device by an agent which resides on the hardware device comprising:</p> <p data-bbox="180 674 797 852">a communication network gateway sending a message to an agent residing on the hardware device informing the agent of a command to install software on the hardware device on which it resides;</p> <p data-bbox="180 890 797 1071">an agent verifying the validity of the message sent to it with the communication network gateway; the communication network gateway transmitting an indication regarding the validity of the command;</p> <p data-bbox="180 1108 797 1255">the agent receiving the command to install software on the hardware device if the indication transmitted from the gateway indicates that the command is valid;</p> <p data-bbox="180 1293 797 1440">the communication network gateway initiating a locking signal regarding the command to install software on the hardware device;</p> <p data-bbox="180 1478 797 1659">the agent requesting files from a file server via the communication network gateway required for completion of the received installation command;</p> <p data-bbox="180 1696 797 1843">the file server sending the files required for completion of the received installation command to the agent via the communication network gateway;</p>	<p data-bbox="797 489 1421 636">1. A method for installing software on a hardware device by an agent which resides on the hardware device comprising:</p> <p data-bbox="797 674 1421 852">a communication network gateway sending a message to an agent residing on the hardware device informing the agent of a command to install software on the hardware device on which it resides;</p> <p data-bbox="797 890 1421 1071">an agent verifying the validity of the message sent to it with the communication network gateway; the communication network gateway transmitting an indication regarding the validity of the command;</p> <p data-bbox="797 1108 1421 1255">the agent receiving the command to install software on the hardware device if the indication transmitted from the gateway indicates that the command is valid;</p> <p data-bbox="797 1293 1421 1461">the communication network gateway initiating a locking signal regarding using pre-determined resources of the hardware device to execute the command to install software on the hardware device;</p> <p data-bbox="797 1499 1421 1646">the agent requesting files from a file server via the communication network gateway required for completion of the received installation command;</p> <p data-bbox="797 1684 1421 1831">the file server sending the files required for completion of the received installation command to the agent via the communication network gateway;</p>

<p>the agent installing the files sent to it on the hardware device upon which it resides in response to the received installation command;</p> <p>and the communication network gateway removing the locking device associated with the command to install software in a hardware device after the files have been installed.</p> <p>12. The method of claim 11, further comprising: the agent installing the files according to an instruction set.</p> <p>13. The method of claim 12, wherein the instruction set comprises the received installation command.</p> <p>14. The method of claim 12, wherein the instruction set comprises a command queue.</p> <p>15. The method of claim 12, wherein the instruction set resides in a network database.</p> <p>16. The method of claim 12, wherein the instruction set resides in a network file server.</p>	<p>the agent installing the files sent to it on the hardware device upon which it resides in response to the received installation command;</p> <p>and the communication network gateway removing the locking signal associated with using the pre-determined resources of the hardware device to execute the command to install software in a hardware device after the files have been installed.</p> <p>8. The method of claim 1, further comprising: the agent installing the files according to an instruction set.</p> <p>9. The method of claim 8, wherein the instruction set comprises the received installation command.</p> <p>10. The method of claim 8, wherein the instruction set comprises a command queue.</p> <p>11. The method of claim 8, wherein the instruction set resides in a network database.</p> <p>12. The method of claim 8, wherein the instruction set resides in a network file server.</p>
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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig et al. (U.S. Patent Number 6,266,809), hereinafter referred to as Craig, in view of Tripp et al. (U.S. Patent Number 6,516,337), hereinafter referred to as Tripp.

8. Craig disclosed a method of executing software commands through a reboot cycle using an agent residing on a hardware device connected to a central provisioning network, comprising the steps of: executing software commands on a hardware device by way of the agent; receiving a reboot command instructing the agent to reboot the hardware device; in response to the reboot command, rebooting the hardware device; pausing the executing of software commands until the hardware device has rebooted; and download software commands once the hardware device has rebooted prior to continue the installation process once the hardware device has rebooted (Abstract, Figures 4A-4B, column 6 lines 1-18, column 7 lines 22-48, lines 55-66).

9. Craig taught the invention substantially as claimed. However, Craig did not expressly teach *resuming the executing of software commands* once the hardware device has rebooted.

10. Craig suggested exploration of art and/or provided a reason to modify the method of executing software commands with the resuming feature (column 6 lines 29-51, column 7 lines 43-48, lines 55-66).

11. Tripp disclosed a step of resuming process updates from the message queue when the service is brought up again (column 35 lines 29-40).

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12. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Craig with the teachings of Tripp to include the resuming feature in order to resume processing as soon as the service is available (Tripp, column 35 lines 29-40) since network computer could be rebooted remotely during installation as required for a complete installation process (Craig, column 6 lines 1-18, column 7 lines 22-42).

13. Regarding claim 2, Craig disclosed a method wherein the reboot command is received from the central provisioning network (Figures 4A-4B, column 7 lines 22-42).

14. Regarding claim 3, Craig disclosed a method further comprising the step of in response to the reboot command, the agent transmitting a reboot underway signal indicating that the reboot cycle is underway (Figures 4A-4B, column 7 lines 22-42).

15. Regarding claim 4, Tripp disclosed a method further comprising the step of updating a command queue to indicate the hardware device's reboot status (column 23 line 52-column 24 line 5, column 24 line 53-67).

16. Regarding claim 5, Tripp disclosed a method wherein a new connection is opened to transmit the reboot underway signal (Figures 4A-4B, column 35 lines 1-13, column 49 lines 54-66).

17. Regarding claims 6 and 10, Tripp disclosed a method wherein the new connection comprises a secure socket (column 17 lines 47-64, column 49 lines 54-66).

18. Regarding claim 7, Craig disclosed a method further comprising the step of: the agent transmitting a reboot completed signal indicating that the reboot cycle has been completed (Figures 4A-4B, column 7 lines 22-42).

19. Regarding claim 7, Craig disclosed a method further comprising the step of determining by checking a command queue [independent records] if more commands remain to be executed (column 7 lines 29-51, lines 60-67).

20. Regarding claim 9, Tripp disclosed a method wherein a new connection is opened to transmit the reboot completed signal (column 17 lines 47-64, column 49 lines 54-66).

21. Since all the limitations of the claimed invention were disclosed by the combination of Craig and Tripp, claims 1-10 are rejected.

22. Claims 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (U.S. Patent Number 6,067,582), hereinafter referred to as Smith, in view of Borman et al. (U.S. Patent Number 6,708,195), hereinafter referred to as Borman.

23. Smith disclosed a method for installing software on a hardware device by an agent which resides on the hardware device comprising: a communication network gateway sending a message to an agent [plug-in module/agent] residing on the hardware device informing the agent of a command to install software on the hardware device on which it resides; an agent verifying the validity of the message sent to it with the communication network gateway; the communication network gateway transmitting an indication regarding the validity of the command; the agent receiving the command to install software on the hardware device if the indication transmitted from the gateway indicates that the command is valid; the agent requesting files from a file server via the communication network gateway required for completion of the received installation

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command; the file server sending the files required for completion of the received installation command to the agent via the communication network gateway; and the agent installing the files sent to it on the hardware device upon which it resides in response to the received installation command (Abstract, Figures 1-2, column 4 lines 14-41, column 5 lines 41-55, column 6 lines 3-38, column 7 lines 36-59).

24. Smith taught the invention substantially as claimed. However, Smith did not expressly teach the communication network gateway initiating a locking signal regarding the command to install software on the hardware device; and the communication network gateway removing the locking device associated with the command to install software in a hardware device after the files have been installed.

25. Smith suggested exploration of art and/or provided a reason to modify the method for installing software with locking signal/state for accessing the hardware device (column 5 lines 10-33, column 6 lines 3-10)

26. Borman disclosed a locking signal/state for accessing the hardware device (column 1 lines 22-41).

27. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Smith with the teachings of Borman to include the locking feature in order to perform user updates in a multi-users environment since in a multi-user environment, controlling access to objects is required such that updates performed by one user are not overwritten by simultaneous updates by another user (Borman, Abstract, column 1 lines 11-18).

28. Regarding claim 12, Smith disclosed a method comprising an agent installing the files according to an instruction set (column 7 lines 36-40).
29. Regarding claim 13, Smith disclosed a method wherein the instruction set comprises the received installation command (column 7 lines 36-59).
30. Regarding claim 14, Smith disclosed a method wherein the instruction set comprises a command queue [procedure proscribed] (column 7 lines 36-59).
31. Regarding claim 15, Smith disclosed a method wherein the instruction set resides in a network database (column 5 lines 10-20).
32. Regarding claim 16, Smith disclosed a method wherein the instruction set resides in a network file server (Figure 1, column 4 lines 14-41).
33. Regarding claim 17, Smith disclosed a method wherein the instruction set comprises instructions for the agent to download the files from a file server in a bundle; unbundle the files; and install the files (column 7 lines 36-59).
34. Regarding claim 18, Smith disclosed a method wherein the bundle downloaded from the file server comprises a combination of files and instructions (column 5 lines 10-55, column 7 lines 36-59).
35. Regarding claim 19, Smith disclosed a method wherein the instructions contained within the bundle comprise instructions regarding the handling of the files contained within the bundle (column 5 lines 10-55, column 7 lines 36-59).
36. Regarding claim 20, Smith and Borman combined disclose a method wherein the locking signal comprises a hardware queue locking signal that prevents the gateway from sending a second command relating to the hardware device upon which the agent

is installing software (Smith, column 5 lines 10-33, column 7 lines 36-59; Borman, Abstract, Figures 1-2, column 1 lines 22-42, column 4 lines 38-62).

37. Regarding claim 21, Smith and Borman combined disclose a method wherein the locking signal comprises an agent queue locking signal, wherein the gateway is prevented from requesting an agent to execute a second command while it is currently executing a command (Smith, column 5 lines 10-33, column 7 lines 36-59, column 8 lines 23-31; Borman, Abstract, Figures 1-2, column 1 lines 22-42, column 4 lines 38-62).

38. Since all the limitations of the claimed invention were disclosed by the combination of Smith and Borman, claims 11-21 are rejected.

Conclusion

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (703) 305-4665 or (571) 272-3930 (new telephone number after October 2004). The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on 703-308-3873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William Cuchlinski
SPE
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tp
August 19, 2004